

IN THE SUPREME COURT OF THE STATE OF DELAWARE

QUINCY TAYLOR,	§
	§ No. 459, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1106004201
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 17, 2011

Decided: October 21, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 21st day of October 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Quincy Taylor, filed an appeal from the Superior Court’s August 9, 2011 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, on June 16, 2011, Taylor pleaded guilty to Possession of a Controlled Substance. He was sentenced to 1 year at Level V incarceration, to be suspended for 1 year at Level III probation. As special conditions of his sentence, Taylor was ordered to perform community service, be evaluated and treated for substance abuse, become gainfully employed and obtain a GED. He also was subject to a zero-tolerance policy for illegal drugs.

(3) On August 9, 2011, following a hearing, the Superior Court found that Taylor had violated the conditions of his probation. Taylor's VOP report reflects that, between June and July 2011, he tested positive for marijuana, failed to report a change of address, absconded from probation and failed to comply with any of the special conditions of his sentence. His probation was revoked and he was re-sentenced to 1 year at Level V, to be suspended for 11 months at Level IV Crest (to be held at Level V for space availability), to be followed by Level III probation upon successful completion of the program.

¹ Supr. Ct. R. 25(a).

(4) In this appeal, Taylor claims that his VOP sentence should be modified to reflect his current participation in a drug program while he is being held in default of bail awaiting trial on subsequently-acquired drug charges.²

(5) The record before us does not reflect that Taylor presented his request for sentence modification to the Superior Court in the first instance. As such, this Court declines to consider it in this appeal.³ Moreover, because it is unknown whether Taylor will successfully complete his current program, his request for modification of his VOP sentence is premature.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

² Taylor does not argue that his VOP sentence either exceeds the statutory maximum or results from an abuse of discretion on the part of the sentencing judge. *Mayes v. State*, 604 A.2d 839, 843 (Del. 1992). Nor does the record reflect that his sentence is improper.

³ Supr. Ct. R. 8.